

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0269
Sales and Use Tax
For The Tax Period 2005

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ISSUE

I. Sales and Use Tax - Imposition

Authority: § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-3-2(a); IC § 6-2.5-2(c)(1); IC § 6-6-6.5-8(d); 45 IAC 2.2-5-15, 45 IAC 2.2-4-27(d). *Indiana Dept. of State Revenue v. Interstate Warehousing*, 783 N.E. 2d 248 (Ind. 2003).

The taxpayer protests the assessments of use tax on an airplane.

STATEMENT OF FACTS

The Taxpayer is a domestic limited liability corporation (LLC) which bought an airplane in 2005. The Taxpayer did not pay sales or use tax at the time of purchase because it claimed that it qualified for the rental/leasing exemption from the sales and use tax pursuant to IC § 6-2.5-5-8. The Indiana Department of Revenue (Department) assessed Indiana use tax, interest, and penalty. The Taxpayer protested the assessment. A hearing was scheduled. The Taxpayer failed to appear. Therefore, this Letter of Findings is based on the documentation in the file.

1. Sales and Use Tax -Imposition

Discussion

All tax assessments are presumed to be valid. IC § 6-8.1-5-1(b). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.* In addition, exemption statutes are to be strictly construed against the Taxpayer. *Indiana Dept. of State Revenue v. Interstate Warehousing*, 783 N.E. 2d 248 (Ind. 2003).

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC § 6-2.5-2-1. Indiana also imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC §

6-2.5-3-2(a). Payment of sales tax at the time of purchase exempts the use of tangible personal property from the use tax. IC § 6-2.5-2(c)(1).

IC § 6-6.5-8(d) provides for the payment of sales or use tax on an airplane as follows:

A person shall pay the gross retail tax or use tax to the department on the earlier of:

- (1) The time the aircraft is registered; or
- (2) not later than thirty-one (31) days after the purchase date;

unless the person presents proof to the department that the gross retail tax or use tax has already been paid with respect to the purchase of the aircraft or proof that the taxes are inapplicable because of an exemption.

The Taxpayer argued that it did not pay the sales or use tax at the time of purchase because the airplane qualified for the rental/ lease exemption. The Taxpayer based its claim for exemption on the following provisions of IC § 6-2.5-5-8:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property. . . .

The law concerning the exemption for leasing or renting to others is further explained at 45 IAC 2.2-5-15 as follows:

(a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the *regular course of the purchaser's business*, such tangible personal property in the form in which it is sold to such purchaser. [Emphasis added]

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

- (1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
- (2) The purchaser is *occupationally engaged in reselling, renting or leasing such property in the regular course of his business*; and
- (3) The property is resold, rented or leased in the same form in which it was purchased.

(c) Application of general rule.

- (1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or value to the property through the rendition of services or performance of work with respect to such property.

- (2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.
- (3) The property must be resold, rented or leased in the same form in which it was purchased.

The rental/leasing exemption requires compliance with three elements. One of these requirements is that the Taxpayer must be engaged in the reselling, renting, or leasing of such property in its regular course of business. The Taxpayer is a limited liability corporation that rented the airplane exclusively to another LLC. The key officers of the Taxpayer LLC are the same people as the key officers of the lessee corporation. The key officers of the Taxpayer LLC essentially rent the airplane to themselves. There is no indication that the airplane was offered for rent to the general public or that anyone else has rented the airplane. The Department is unable to agree that this arrangement constitutes an arms length transaction.

The issue of an appropriate lease rate is addressed at 45 IAC 2.2-4-27(d) as follows:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

- (1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

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The rental rate charged for this airplane is not rationally related to the total cost of the airplane. The rate of \$520 per flight hour is significantly below the actual business cost of operating the airplane. The Taxpayer is leasing the airplane significantly below cost. The Taxpayer only sporadically collects and remits the sales tax on the rentals of the airplane.

Further, the insurance policy is issued to cover "Private Business and Pleasure." If this were a true rental situation, the insurance policy would be specialized for the rental situation.

Based upon the evidence presented, the Department is unable to conclude that the Taxpayer was "occupationally engaged in reselling, renting or leasing such property in the regular course of his business." 45 IAC 2.2-5-15(b)(2).

Finding

The Taxpayer's protest to the assessment of use tax on its airplane is respectfully denied.

KMA/BK/DK- March 19, 2007